

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 285

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO WATER; AMENDING AND ENACTING SECTIONS OF CHAPTER 72
NMSA 1978 TO PROVIDE FOR THE ISSUANCE OF STATE ENGINEER PERMITS
FOR DOMESTIC WELLS IN DOMESTIC WELL MANAGEMENT AREAS; PROVIDING
FOR THE DECLARATION OF DOMESTIC WELL MANAGEMENT AREAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-2-8 NMSA 1978 (being Laws 1967,
Chapter 246, Section 1) is amended to read:

"72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,
ORDERS--PRESUMPTION OF CORRECTNESS.--

A. The state engineer may adopt regulations and
codes to implement and enforce any provision of any law
administered by ~~him~~ the state engineer and may issue orders
necessary to implement ~~his~~ decisions and to aid ~~him~~ in the
accomplishment of ~~his~~ the state engineer's duties. In order

1 to accomplish its purpose, this provision is to be liberally
2 construed.

3 B. Directives issued by the state engineer shall be
4 in form substantially as follows:

5 (1) regulations are written statements of the
6 state engineer of general application to the public,
7 implementing statutes, prescribing procedures and interpreting
8 and exemplifying the statutes to which they relate;

9 (2) codes are written standards and
10 specifications governing design and construction of dams;

11 (3) orders are written statements of the state
12 engineer to implement [~~his decision~~] the state engineer's
13 decisions; and

14 (4) special orders are written statements
15 defining the declared boundaries of underground streams,
16 channels, artesian basins, reservoirs, [~~or~~] lakes or domestic
17 well management areas.

18 C. To be effective, a regulation, code or special
19 order issued by the state engineer shall be reviewed by the
20 attorney general or other legal counsel of the office of the
21 state [~~engineer's office~~] engineer prior to being filed as
22 required by law and the fact of [~~his~~] the state engineer's
23 review shall be indicated thereon.

24 D. To be effective, a regulation or code shall
25 first be issued as a proposed regulation or proposed code and

1 filed for public inspection in the office of the state engineer
2 along with the findings of fact that in the opinion of the
3 state engineer justify the regulation or code. Distribution
4 shall also be made to each district and field office for public
5 inspection and to each of the persons on the file of interested
6 persons [~~hereinafter~~] mentioned in Subsection G of this
7 section. After the proposed regulation or code has been on
8 file for one month, [~~he~~] the state engineer shall publish it
9 or, if it is lengthy, a resume of it in not less than five
10 newspapers of general circulation in the state, once a week for
11 two consecutive weeks, with the statement that there will be a
12 hearing on the proposed regulation or code on a day set in the
13 publication, which shall be not more than thirty days nor less
14 than twenty days after the last publication. The hearing shall
15 be held in Santa Fe, and any person who is or may be affected
16 by the proposed regulation or code may appear and testify.

17 E. Special orders may be promulgated without prior
18 notice and hearing, but the state engineer shall, within ten
19 days of promulgation of a special order, set a date for a
20 hearing on the special order and publish notice of the public
21 hearing in the same manner required [~~above~~] in Subsection D of
22 this section. When a special order is promulgated to declare a
23 domestic well management area, the special order shall not
24 become effective until after notice and hearing, and the state
25 engineer shall not accept applications for permits for domestic

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1 water use within the proposed domestic well management area
2 until the final special order is adopted following the hearing.
3 A hearing on a special order to declare a domestic well
4 management area shall be held within the proposed domestic well
5 management area or as close as practicable to that area.

6 F. In addition to filing copies of regulations as
7 required by law, the state engineer shall maintain in [~~his~~] the
8 office of the state engineer duplicate official sets of current
9 regulations, codes and special orders, which sets shall be
10 available for inspection by the public.

11 G. The state engineer shall develop and maintain a
12 file of names and addresses of individuals and professional,
13 agricultural and other groups having an interest in the
14 promulgation of new, revised or proposed regulations and shall
15 at convenient times distribute to these persons all such
16 regulations, making such charges [~~therefor~~] as will defray the
17 expense incurred in their physical preparation and mailing.

18 H. Any regulation, code or order issued by the
19 state engineer is presumed to be in proper implementation of
20 the provisions of the water laws administered by [~~him~~] the
21 state engineer.

22 I. The state engineer shall state the extent to
23 which regulations, codes and orders will have retroactive
24 effect and, if no such statement is made, they will be applied
25 prospectively only."

1 Section 2. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
2 Chapter 298, Section 2) is amended to read:

3 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

4 A. A person, firm or corporation desiring to use
5 public underground waters described in this section for
6 irrigation of not to exceed one acre of noncommercial trees,
7 lawn or garden or for household or other domestic use shall
8 make application to the state engineer for a well on a form to
9 be prescribed by the state engineer. Upon the filing of each
10 application describing the use applied for, the state engineer
11 shall issue a permit to the applicant to use the underground
12 waters applied for [~~provided that~~], except as otherwise
13 provided in this section.

14 B. Permits for domestic water use within
15 municipalities shall be conditioned to require the permittee to
16 comply with all applicable municipal ordinances enacted
17 pursuant to Chapter 3, Article 53 NMSA 1978.

18 C. Subject to the limitations imposed by Section
19 72-5-24.1 NMSA 1978, within a domestic well management area,
20 the state engineer shall grant a permit for domestic water use
21 pursuant to this section only if the applicant transfers into
22 the proposed domestic well other valid existing water rights
23 from within the same domestic well management area pursuant to
24 Subsection D of this section.

25 D. An applicant for a permit for domestic water use

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1 within a domestic well management area may apply pursuant to
2 this subsection to change the place or purpose of use and the
3 point of diversion into the proposed domestic well of up to one
4 acre-foot per year of consumptive use from other valid existing
5 water rights within the same domestic well management area;
6 provided that the proposed change shall not increase depletions
7 within the domestic well management area and the water right to
8 be transferred is not from an acequia or a community ditch.
9 The fee for an application made pursuant to the provisions of
10 this subsection shall not exceed the amount charged to file an
11 application for a change in location of well or place or
12 purpose of use.

13 E. Water rights transferred into a domestic well
14 pursuant to Subsection D of this section shall retain the
15 priority date of the transferred water right and may be
16 transferred to a new point of diversion or place or purpose of
17 use pursuant to the provisions of Section 72-12-7 NMSA 1978."

18 Section 3. A new section of Chapter 72, Article 12 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] DOMESTIC WELL MANAGEMENT AREAS.--

21 A. The legislature finds that:

22 (1) the constitution of New Mexico provides
23 that only unappropriated water is subject to appropriation and
24 that priority of appropriation gives the better right.

25 Protection of senior water rights is one of the statutory

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1 duties of the state engineer in New Mexico;

2 (2) pursuant to eight interstate stream
3 compacts, New Mexico is required to deliver water to other
4 states, and failure to meet compact delivery obligations can
5 result in expensive litigation, multimillion dollar judgments
6 and priority calls with severe economic disruption;

7 (3) active resource management is essential if
8 New Mexico is to protect, manage and develop its water
9 resources;

10 (4) demand for water exceeds the available
11 supply in many areas of the state, and some of these areas
12 require heightened protection and management if senior water
13 rights are to be protected, the state's interstate compact
14 obligations are to be met and the citizens in those areas are
15 to be protected from the loss of a vital resource; and

16 (5) in areas of the state that require
17 heightened protection, designation of domestic well management
18 areas may be necessary to prolong the life of an aquifer,
19 protect senior water rights, enhance the ability of the state
20 to meet its interstate stream compact delivery obligations and
21 protect the health and safety of its citizens.

22 B. As used in Chapter 72 NMSA 1978, "domestic well
23 management area" means a bounded area, specifically described
24 by section, township and range, or by other land survey
25 descriptions, that requires special water resource protection

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1 because additional depletions resulting from new domestic wells
2 will impair existing senior water rights or negatively affect
3 the flows of a stream subject to an interstate compact.

4 C. The state engineer may declare, modify or
5 terminate a domestic well management area through a special
6 order promulgated pursuant to Section 72-2-8 NMSA 1978.

7 D. The state engineer shall treat all domestic well
8 applications filed pursuant to Section 72-12-1.1 NMSA 1978 in
9 the same manner in each domestic well management area.

10 E. Upon declaration of a domestic well management
11 area, the state engineer shall review the declaration every ten
12 years, or more frequently as the state engineer determines is
13 necessary, to determine whether the domestic well management
14 area continues to meet the criteria for declaration."